

# Notice of Allowability

Application No.

10/053,718

Examiner

Victor K. Hwang

Applicant(s)

PEMBERTON, BRENT D.

Art Unit

3764

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment and remarks filed Oct. 11, 2005.
2. ☒ The allowed claim(s) is/are 1,2,6,7,11 and 12.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 20051103.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Tod R. Nissle on November 3, 2005.

2. The application has been amended as follows:

#### **In the Specification:**

- A) Page 6, line 6, after "30 to 50" insert --Shore A--.

#### **In the Claims:**

Amend the claims as follows:

1. (Currently Amended) A method of exercising a hand, said hand including fingers and a palm, said method comprising the steps of:
  - (a) providing a doughnut-shaped, compressible, elastic exercise apparatus, said exercise apparatus having a generally circular center line Y and a deformability which permits one portion of the apparatus to be rotated by the fingers while another portion of the apparatus is stationary, wherein said exercise apparatus includes a central opening having a diameter in the range of one and five-eighths inches to two and one-eighth inches, and a

generally circular elastic ring circumscribing said opening and having a circular cross-section with a diameter in the range of five-eighths to nine-eighths of an inch, and has a durometer in the range of 30 to 50 Shore A;

- (b) grasping the exercise apparatus in the hand between the fingers and palm such that a first portion of the apparatus having a generally circular cross-section area is grasped by the fingers and a second portion of the apparatus nests in the palm of the hand; and
- (c) moving the fingers to simultaneously
  - (i) displace said first portion toward said second portion, and
  - (ii) elastically rotate and twist said first portion about said centerline Y while said second portion generally remains nested in and is prevented from rotating by the palm, and said cross-sectional area is reduced by less than 20% during step (c).

- 2. (Currently Amended) The method of Claim 1 wherein ~~said first portion has a generally circular cross-sectional area~~ and said cross-sectional area is reduced by less than 5% during step (c).

3. (Canceled)

4. (Canceled)

5. (Canceled)

6. (Currently Amended) A method of exercising a hand, said hand including fingers and a palm, said palm including an upper portion, each of said fingers including a lower portion, said method comprising the steps of:
- (a) providing a doughnut-shaped, compressible, elastic exercise apparatus, said exercise apparatus having a generally circular center line Y and a deformability which permits
    - (i) one portion of the apparatus to be rotated by the fingers while another portion of the apparatus is stationary, and
    - (ii) said apparatus to arch elastically into the upper portion of the palm and the lower portion of each of the fingers, wherein said exercise apparatus includes a central opening having a diameter in the range of one and five-eighths inches to two and one-eighth inches, and a generally circular elastic ring circumscribing said opening and having a circular cross-section with a diameter in the range of five-eighths to nine-eighths of an inch, and has a durometer in the range of 30 to 50 Shore A;
  - (b) grasping the exercise apparatus in the hand between the fingers and palm such that a first portion of the apparatus having a generally circular cross-section area is grasped by the fingers and a second portion of the apparatus nests in the palm of the hand;
  - (c) moving the fingers to simultaneously
    - (i) displace said first portion toward said second portion,

- (ii) elastically rotate and twist said first portion about said centerline Y while said second portion generally remains nested in and is prevented from rotating by the palm, and
  - (iii) cause said apparatus to elastically arch into the upper portion of the palm and the lower portion of each of the fingers, and said cross-sectional area is reduced by less than 20% during step (c).
- 7. (Currently Amended) The method of Claim 1 wherein ~~said first portion has a generally circular cross-sectional area and~~ said cross-sectional area is reduced by less than 5% during step (c).
- 8. (Canceled)
- 9. (Canceled)
- 10. (Canceled)
- 11. (Currently Amended) The method of Claim ~~4~~ 1 wherein said exercise apparatus is fabricated from rubber.
- 12. (Currently Amended) The method of Claim 9 6 wherein said exercise apparatus is fabricated from rubber.—

### REASONS FOR ALLOWANCE

3. The following is an examiner's statement of reasons for allowance: the prior art of record does not teach or make obvious providing an exercise apparatus as claimed and moving the fingers to simultaneously displace the first portion toward the second portion and elastically rotate and twist the first portion about the centerline Y while the second portion remains nested in and is prevented from rotating by the palm.

Exer-Rings has a surface that does not provide sufficient friction to perform the rotation and twisting about the centerline Y without undue force. Therefore, it is concluded that the rotation and twisting would not be inherent in its use.

*Carlson* discloses a form of rotation and twisting, but the apparatus has no central opening and has a center bar 13 that provides support to permit the bending of the apparatus as shown in Fig. 2.

*Sorbathane* is a material that is visco-elastic with a hardness in the range of 20 to 70 durometer on the Shore "00" scale which would mean that the material is more gel like and would be too soft to perform as claimed in the inventive method. The apparatus used in the claimed method is a rubber material with a durometer in the range of 30 to 50. It is well known in the art that the durometer of rubber as described in the specification uses the Shore A scale.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

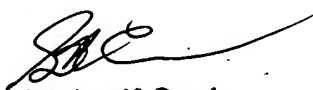
The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
November 8, 2005



Stephen K. Cronin  
Primary Examiner